

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

January 23, 1998

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| UNITED STATES OF AMERICA |) | |
| Complainant, |) | |
| |) | 8 U.S.C. § 1324a Proceeding |
| v. |) | |
| |) | OCAHO Case No. 96A00096 |
| JONEL, INC. D/B/A MAACO AUTO |) | |
| PAINTING AND BODYWORKS |) | |
| Respondent. |) | |

ORDER COMPELLING RESPONSES TO INTERROGATORIES

PROCEDURAL BACKGROUND

This is an action pursuant to the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a (INA or the Act) in which INS alleged that Jonel Inc. engaged in 10 separate violations of the Act. On September 30, 1997 I issued an order granting in part and denying in part the INS' motion for summary decision. The issues remaining for hearing after that ruling are:

- 1) Whether Jonel knowingly hired or continued to employ Hezekiah Gibson and Jose Asdrubal Jiminez Montoya after November 6, 1986, when they were not authorized for employment in the United States;
- 2) Whether Jonel failed to properly complete Section 2 of Form I-9 for Robert Brown, an employee hired after November 6, 1986;
- 3) What penalties are appropriate for the seven separate violations already established by summary decision; and
- 4) If the additional violations are proved, what penalties are appropriate as to them.

On January 5, 1998, pursuant to OCAHO rules¹ INS filed its motion to compel answers to interrogatories. No response has been made to this motion.² The motion represents that on October 8, 1997 INS forwarded 25 interrogatories to Jonel, that Jonel failed altogether to respond

¹ Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. Pt. 68 (1997).

² 28 C.F.R. § 68.11(b) provides that a party may file a response to a motion within ten (10) days of service of that motion.

and that INS is accordingly disadvantaged in the preparation of its case for hearing. A copy of the interrogatories is attached to the motion. Section 68.23(b) provides that a motion to compel shall set forth “(1) The nature of the questions or requests; (2) The response or objections of the party upon whom the request was served; and (3) Arguments in support of the motion.” 28 C.F.R. § 68.23(b)(1), (2), and (3).

Complainant’s argument in support of its motion is that answers should be compelled based upon the failure of Jonel to reply at all; thus the individual interrogatories themselves are not addressed, explained, or supported. I have reviewed them and find them for the most part to be at least arguably relevant and within the scope of § 68.18(b), with one exception.

Interrogatory no. 5 states:

If any of the individuals, named in your response to the preceding interrogatory,³ were (sic) born outside of the United States or its territories or possessions, please state the following information for each:

- (a) his or her place of birth.
- (b) his or her present immigration status in the United States (e.g. U.S. citizen, Lawful Permanent Resident etc.).
- (c) the date and location of his or her first entry into the United States.
- (d) the manner in which he or she first entered the United States (e.g. without inspection, visitor for pleasure or business, lawful permanent resident etc.).

The scope of discovery under OCAHO rules is broad, but not limitless. A request for discovery is relevant if there is a possibility the information sought may be relevant to the subject matter involved in the proceeding. 28 C.F.R. § 68.18(b). Absent some explanation of how the information sought is relevant to, or is likely to lead to information relevant to, the issues in this case, the motion to compel will be denied without prejudice as to interrogatory no. 5. I am unable to discern from INS’ submission how the information sought by that interrogatory has any bearing on the issues remaining for hearing in this matter.

Jonel will therefore be required to respond to interrogatories 1 through 4 and 6 through 25. Jonel having wholly failed to provide any responses, it is hereby notified that:

If a party, an officer or an agent of a party, or a witness, fails to comply with an order, including, but not limited to, an order for the taking of a deposition, the production of documents, the answering of interrogatories, a response to a request for admissions, or any other order of the Administrative Law Judge, the Administrative Law Judge, may, for the purposes of permitting resolution of the

³ The preceding interrogatory requests identifying information for Jonel’s officers and incorporators.

relevant issues and disposition of the proceeding and to avoid unnecessary delay, take the following actions:

- (1) Infer and conclude that the admission, testimony, documents, or other evidence would have been adverse to the non-complying party;
- (2) Rule that for the purposes of the proceeding the matter or matters concerning which the order was issued to be taken as established adversely to the non-complying party;
- (3) Rule that the non-complying party may not introduce into evidence or otherwise rely upon testimony by such party, officer or agent, or the documents or other evidence, in support of or in opposition to any claim or defense;
- (4) Rule that the non-complying party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;
- (5) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both;

28 C.F.R. § 68.23(c)(1) - (5) (emphasis supplied).

CONCLUSION

Jonel will provide responses to Interrogatories 1 through 4 and 6 through 25 on or before February 13, 1998. If appropriate, INS may file any dispositive motions based on those responses (or their absence) on or before March 20, 1998.

SO ORDERED.

Dated and entered this 23rd day of January, 1998.

Ellen K. Thomas
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 1998, I have served copies of the foregoing Order Compelling Responses to Interrogatories on the following persons at the addresses indicated:

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